



IT IS ORDERED as set forth below:

Date: April 19, 2011

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	
INTERNATIONAL MANAGEMENT	:	Case No. 06-62966-pwb
ASSOCIATES, LLC,	:	
	:	
Debtor.	:	
_____	:	
	:	
WILLIAM F. PERKINS, in his capacity as Plan	:	
Trustee of International Management Associates,	:	
LLC, and its affiliated debtors,	:	
	:	
Plaintiff,	:	
vs.	:	Adversary No. 10-06090
	:	
AMERICAN INTERNATIONAL SPECIALTY	:	
LINES INSURANCE COMPANY; NASDAQ	:	
OMX GROUP, INC.,	:	
	:	
Defendants.	:	
_____	:	

**ORDER ON MOTION FOR PROTECTIVE ORDER OF AMERICAN
INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY**

American International Specialty Lines Insurance Company (“AISLIC”), one of the defendants in this adversary proceeding, has filed a motion for a protective order [67] to prohibit

the plaintiff, William F. Perkins, the Plan Trustee for International Management Associates, LLC (the “Debtor”), from taking a second deposition under Fed. R. Civ. P. 30(b)(6), *applicable under* Fed. R. Bankr. P. 7030, after the Trustee has already concluded one Rule 30(b)(6) deposition.

Fed. R. Civ. P. 26(c), *applicable under* Fed. R. Bankr. P. 7026, authorizes the court, for “good cause,” to issue an order with regard to requested discovery “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” AISLIC asserts that good cause exists because it faces a “substantial and unreasonable burden” if the Trustee is allowed to take a second Rule 30(b)(6) deposition and because the Trustee cannot take a second Rule 30(b)(6) deposition without leave of the court. (Motion at 8).

The Trustee asserts that his first Rule 30(b)(6) notice required AISLIC to produce a witness who could testify as to “[t]he existence, location, attempts to locate and produce, and production of documents requested in Plaintiff’s First Requests for Production of Documents, specifically including, but not limited to, any document retention system, the indexing or organization of any documents, policies, and practices for the retention, preservation or destruction of documents and the names and addresses of witnesses with knowledge of retention, preservation or destruction of documents relating to the matters at issue in the above-styled action.” (Trustee’s Brief in Opposition to Motion for Protective Order [70] at 16). The designated witness, Martha Keane, did not have knowledge of how AISLIC records premium payments and referred to an employee in AISLIC’s premium collection department whose last name she could not recall. (Trustee’s Brief at 14-15, 17). The Trustee asserts that AISLIC’s counsel later declined to identify this employee and stated that the Trustee should serve a Rule 30(b)(6) notice instead. (Trustee’s Brief at 15).

The second Rule 30(b)(6) notice requires AISLIC to produce a witness or witnesses to testify about “the billing, collection, processing, depositing, and recording of any premium payment” with regard to the insurance policy in issue in this proceeding and AISLIC’s “practices, protocols and systems” relating to the billing, collection, processing, depositing, and recording of premium payments.

AISLIC asserts that it should not be burdened with a second Rule 30(b)(6) deposition relating to payment of the premium because the Trustee’s discovery to date has produced no evidence that the Debtor paid the premium. (Motion at 8 – 13). The Trustee, however, has demonstrated that AISLIC’s practices with regard to premium payments, and the extent to which it followed them in this matter, is relevant to the issues in this proceeding. (Trustee’s Brief at 11-15). The Trustee is clearly entitled to the discovery he seeks.

Beyond its generalized argument that preparing a second witness will be burdensome, AISLIC has shown nothing from which the court could conclude that AISLIC might suffer “undue burden or expense,” and it has not asserted the existence of annoyance, embarrassment, or oppression. AISLIC is not entitled to a protective order on this ground.

AISLIC alternatively asserts that the Trustee cannot proceed with a second Rule 30(b)(6) deposition because he has already concluded one. It is true that Rule 30(a)(2)(A)(ii) requires leave of court for a party to take a deposition if the proposed deponent has already been deposed. Rule 30(a)(2) states that the Court *must* grant such leave “to the extent consistent with Rule 26(b)(2).” Nothing indicates that granting leave to take a second Rule 30(b)(6) deposition in the circumstances of this proceeding is inconsistent with Rule 26(b)(2). Accordingly, the Court hereby grants leave to the Trustee to take a second Rule 30(b)(6) deposition as proposed.

The Trustee in his response to the Motion seeks reasonable expenses, including attorney's fees, incurred in opposing it. (Trustee's Brief at 18-19). Fed. R. Civ. P. 37(a)(5), *applicable under* Fed. R. Bankr. P. 7037, requires the court to require payment of reasonable expenses in connection with resolution of a discovery dispute unless the motion was "substantially justified" or "other circumstances make an award of expenses unjust." Rule 37(a)(5) applies to a motion for a protective order under Rule 26(c)(3).

The circumstances of the dispute here may provide the basis for conclusions that AISLIC had no substantial justification for filing the motion and that the award of expenses would not be unjust. The Trustee succinctly states the argument in his brief: "AISLIC's primary basis for [its] untenable position is that the Trustee does not have evidence that AISLIC received any premium payment and therefore should not be allowed to try to gather any. . . . AISLIC's other argument is that the deposition sought would be duplicative of a routine and limited document custodian deposition that had nothing at all to do with the premium collection procedures and processes that are the focus of the [second Rule 30(b)(6)] notice." (Trustee's Brief at 19).

AISLIC has not responded to the Trustee's request for expenses and attorney's fees. In order to permit the Court to consider whether the award of expenses and attorney's fees is appropriate in this proceeding and, if so, the amount of same, the Court will require AISLIC to file a response setting forth the facts and law applicable to such determination. In particular, the Court is interested in quantifications of the expense AISLIC expected it would incur in connection with the second Rule 30(b)(6) deposition and of the expense it expected it would incur in filing its motion for a protective order and the specific efforts it made to resolve the dispute.

The Court is also concerned about the Trustee's allegations that AISLIC declined to identify the employee to whom Ms. Keane referred and stated that the Trustee should proceed under Rule 30(b)(6). The Court invites AISLIC to state its views with regard to whether it is appropriate to oppose a deposition notice that its counsel appears to have suggested.

Based on, and in accordance with, the foregoing, it is hereby **ORDERED and ADJUDGED** as follows:

1. AISLIC's motion for a protective order [67] is **DENIED**.
2. The Trustee is granted leave to take a second Rule 30(b)(6) deposition as proposed.
3. Within 21 days from the date of entry of this Order, AISLIC shall file and serve a response to the Trustee's request for payment of expenses, including attorney's fees. The Trustee may file and serve a reply to the response within 14 days after AISLIC serves it. AISLIC's response and the Trustee's reply shall identify any issues of fact with regard to which an evidentiary hearing is required. Following receipt of AISLIC's response and the Trustee's reply, the Court will schedule an evidentiary hearing, if appropriate, or determine whether an award of expenses is required. If the Court determines that an award of expenses is appropriate, the Court will direct the Trustee to file an itemization of same, permit AISLIC to respond to same, conduct an evidentiary hearing if required, and make an appropriate award.

[END OF ORDER]

This Order was not prepared for publication.